

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Regulated Industries Committee

BILL: CS/SB 2504

INTRODUCER: Regulated Industries Committee and Senator Aronberg

SUBJECT: Constructing Contracting

DATE: April 16, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	Fav/CS
2.			CA	
3.				
4.				
5.				
6.				

I. Summary:

The bill provides that certified, registered contractors, or locally licensed contractors may not perform work that they are not properly licensed for nor may they subcontract to unlicensed persons work that requires a license or fail to obtain required permits.

The bill allows a local jurisdiction to issue civil citations to state certified construction contractors for the following violations:

- Failure to obtain a required building permit ;
- Aiding and abetting unlicensed activity;
- Fraud or willful building code violations;
- Failure to use a license number in marketing or advertising; and
- Failure to obtain required inspections.

This bill substantially amends section 489.127 of the Florida Statutes.

II. Present Situation:

A registered contractor is any contractor who has registered with the department pursuant to fulfilling the competency requirements in the jurisdiction where the registration is issued. ¹

A certified contractor is a contractor who possesses a certificate of competency issued by the department and may contract in any jurisdiction in the state. ²

¹ Section 489.105(10), F.S.

Certified and registered construction contractors are subject to administrative discipline for the following violations of ch. 489.129, F.S.:

- Performing any act that assists a person in engaging in uncertified and unregistered contracting;
- Knowingly combining and conspiring with an uncertified or unregistered person by allowing his or her certificate, registration, or certificate of authority to be used by the uncertified or unregistered person with the intent to evade s. 489.129, F.S.
- Failing to comply with the provisions of s. 489.129, F.S., or violating a rule or lawful order of the board;
- Proceeding on any job without obtaining applicable local building department permits and inspections.

A local construction regulation board (board) may deny, suspend, or revoke the authority of a certified contractor to obtain a building permit or limit the authority to obtain a permit with specific conditions if the contractor has been found guilty of fraud or a willful building code violation.³

A local government can deny issuance of or may suspend, any outstanding building permit when a contractor fails or refuses to provide proof of public liability and property damage insurance coverage and workers' compensation insurance coverage.⁴

Local jurisdiction agencies that enforce the regulatory laws must issue a notice of noncompliance as its first response to a minor violation of a regulatory law. Minor violations are those that do not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of harm.⁵

Each county or municipality may designate a code enforcement officer to issue citations to registered contractors for the following violations found in s. 489.127(1), F.S.:

- Falsely holding himself or herself or a business organization out as a licensee, certificateholder, or registrant;
- Falsely impersonating a certificateholder or registrant;
- Presenting as his or her own the certificate, registration, or certificate of authority of another;
- Knowingly give false or forged evidence to the board or a member thereof;
- Use or attempt to use a certificate, registration, or certificate of authority which has been suspended or revoked;
- Engaging in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act

² Section 489.105(8), F.S.

³ Section 489.113(4)(b), F.S.

⁴ Section 489.113(4)(c), F.S.

⁵ Section 489.113(4)(d), F.S.

in the capacity of a contractor without being duly registered or certified or having a certificate of authority;

- Operating a business organization engaged in contracting after 60 days following the termination of its only qualifying agent without designating another primary qualifying agent, except as provided in ss. 489.119 and 489.115;
- Commencing or perform work for which a building permit is required pursuant to part VII of chapter 553 without such building permit being in effect; or
- Willfully or deliberately disregard or violate any municipal or county ordinance relating to uncertified or unregistered contractors;⁶

Citations may all be issued to uncertified or unregistered persons associated with a contracting firm qualified by the licensee under this chapter who:

- Conceal or cause to be concealed, or assist in concealing, from the primary qualifying agent, any material activities or information about the contracting firm;
- Exclude or facilitate the exclusion of any aspect of the contracting firm's financial or other business activities from the primary qualifying agent;
- Knowingly cause any part of the contracting firm's activities, financial or otherwise, to be conducted without the primary qualifying agent's supervision; or
- Assist or participate with any certificateholder or registrant in the violation of any provision of this ch. 489, F.S.⁷

The violator can either correct the violation and pay the civil penalty or within 10 days of receipt of the citation request an administrative hearing before the enforcement or licensing board or designated special magistrate to appeal the issuance of the citation by the code enforcement officer. Willfully refusing to sign and accept a citation is a second degree misdemeanor.⁸

Any person who violates the provisions of s. 489.127(4)(d), F.S., commits a misdemeanor of the first degree for the first offense and a felony of the third degree for subsequent violations.

III. Effect of Proposed Changes:

The bill creates s. 489.127(4)(d), F.S., to provide that certified, registered contractors, or locally licensed contractors may not perform work that they are not properly licensed for nor may they subcontract to unlicensed persons work that requires a license or fail to obtain required permits.

The bill amends s. 489.127(5)(o), F.S., provide that a local jurisdiction may issue civil citations to certified contractors for the following violations:

- Failure to obtain a required building permit ;
- Aiding and abetting unlicensed activity;
- Fraud or willful building code violations;
- Failure to use a license number in marketing or advertising; and

⁶ Section 489.127(5), F.S.

⁷ Section 489.132, F.S.

⁸ Section 489.127(4)(d), F.S.

- Failure to obtain required inspections.

It provides that the procedure for issuing a civil citation does not authorize a local jurisdiction to exercise disciplinary authority against a state-certified contractor.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

By expanding the citation authority of local governments over certified contractors, the local governments may receive additional revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
